

P E T I T I O N

OF

THOMAS AND HENRY SHIRLEY,

OF TUTAEKURI

IN THE

PROVINCE OF HAWKE'S BAY.



# PETITION OF THOMAS AND HENRY SHIRLEY.

G—No. 2.

To the Honourable the House of Representatives in Parliament Assembled:—  
The Humble Petition of THOMAS SHIRLEY, and HENRY SHIRLEY, of  
Tutaekuri in the Province of Hawke's Bay, Farmers,

Sheweth,—

That for some time past your Petitioners have been carrying on business together as Farmers upon the freehold consisting of 60 acres, the property of Thomas Shirley, and that the principal source, from which your Petitioners derive their humble subsistence is by the sale and purchase of cattle and by a Dairy Farm which such cattle supply. That the river Tutaekuri separates your Petitioners property from the adjoining Native Lands, and that your Petitioners have always endeavoured to keep their cattle, which have varied in number from ten only in 1857, to twenty-nine at the end of last year, on their own side of the river; but in consequence of their being unable to bear the expense of fencing, or of employing sufficient persons to herd the cattle, they frequently strayed across the river and fed upon the Maori Land—to prevent which as much as possible your Petitioners fastened a bell to one of the cows to enable them by its sound to ascertain the position of the herd, and when it warned them that the cattle had strayed, they used to send after them and bring them back. That from time to time the Natives claimed rent or grass money from your Petitioners for such trespass, which they always declined to pay on the ground that they endeavoured to prevent the cattle straying and that it was involuntary on their part. The Natives never insisted on their claim, nor took any means for recovering the same if they were legally entitled thereto. That in the month of October last, the claim was renewed and a demand made by one Paora Kaiwhata on your Petitioners for the sum of thirty pounds for five years grass money due to him, which however your Petitioners declined to pay. That being compelled to sell a portion of their stock they had twenty head of cattle driven into their own stockyard, and advertised a sale by public auction for the 15th day of October, whereupon the said Native renewed his claim and your Petitioners, though not admitting the claim, and to bring peace and to prevent any delay or obstacle to the said sale, offered to pay him the sum of twenty pounds; and not having that sum in hand wherewith to pay, promised to give him an order on the Auctioneer for that amount, who was to sell the cattle on their behalf, which the Native declined to accept; and your Petitioners being otherwise unable to accede to his demands, upon a given signal sixteen Natives armed with sticks and spears, rushed into their stockyard, tore down one of the sides of it, and drove away the cattle collected for the following day's sale—that your Petitioner Thomas, a man of 61 years of age, endeavoured to restrain them but was knocked down with an axe and beaten with a pole whilst on the ground and disabled; and that your other Petitioner Henry, when attempting to assist and rescue his said father was forcibly seized and confined by five Natives, and that the wives of both your Petitioners who were present were also forcibly seized and thrown into a ditch and kept there. That having let loose the said cattle they drove them across the river on to their own land and there detained them three months. That the cattle so driven away consisted chiefly of milch cows, which were daily milked by your Petitioners and were depastured on your Petitioners' property and which were not in the habit of straying on Native Land. That on the evening of the said fourteenth, your Petitioner Henry came down to the Resident Magistrate for redress and protection and requested assistance to recover their property, but the same was not afforded them, and being unable to bear the expense of an application in the Supreme Court, (as well as the uncertainty of success there, where they probably would have been told that their remedy lay with the local Court at Wellington), they were compelled to submit to this violent outrage and were deprived of their chief means of subsistence for many months. That the cattle so taken by the Natives were of the value of £160 at the rate of £8 per head. That in the month of January last, Mr. Crosbie Ward, Postmaster General of the Colony, having visited Napier, your Petitioners mentioned the subject, when he induced the Natives to return eighteen of the cattle, and procured a special sitting of Justices and Native Assessors, to be holden for the purpose of considering the whole matter. That a summons was issued by Alexander Alexander, Esq., J.P., on behalf of Paora Kaiwhata against your Petitioner Henry for payment of £30 for rent, and was made returnable at Puketapu in the said Province, on the 11th day of January last. That your Petitioners attended such Court, and having no other available remedy, issued a counter summons against the said Native for trespass, and for breaking their stockyard, and for damages for the wrongful removal and detention of their cattle; that the Court consisted of three Justices of the Peace (the Resident Magistrate and two others) and two Native Assessors, Tareha and Renata, both of whom, by Native custom, lords of the soil where the alleged trespass took place, and entitled to the larger part of any damages awarded to the Native. An objection was consequently raised by counsel for your Petitioners, that being interested in the result they were disqualified from acting as Judges, or taking part in the decision, but this objection not being allowed the case was proceeded with. The Native asserted that a continual trespass had taken place, and stated that your Petitioner had agreed to pay him rent. He claimed rent as one of the Natives interested in the land trespassed on, and which he admitted belonged principally to the two Native Assessors,

Renata and Tareha, who had sanctioned the proceedings, and who would be entitled to the principal share of any damages awarded. His evidence was partially corroborated by that of another Native, and your Petitioner Thomas was examined in defence and denied, as the fact was, that he had ever agreed to pay rent; he stated that the trespass was only occasional and accidental, and not arising out of any agreement with the Natives; that it had been permitted by the Natives throughout and was merely a permissive trespass for which the Natives if aggrieved might have impounded, but for which they could not recover damages; and it was argued by counsel on your Petitioners' behalf that the Court had no jurisdiction in the case, being precluded by the provisions of the Native Land Purchase Ordinance. Before deciding this case the Court determined to hear the counter case, when your Petitioners proved the facts so far as the rent claimed by the natives, their offer to pay £20, the Natives' refusal, the breaking down the fence by armed Natives, the assault upon your Petitioners and their wives, and the driving away of the cattle were concerned and it was proved by the evidence of the two Natives first examined that the conduct of Paora and his associates was known to, and sanctioned, and approved of by the chiefs Tareha and Renata; your Petitioners further showed that twenty head of cattle were driven away, consisting principally of milch cows, which never trespassed on the Native Lands, but were mustered twice a day to be milked; and that at first only sixteen and afterwards two more only have been returned to them; and besides these nine head of cattle were driven away by the Natives and have never since been returned or found; that by the abstraction of the said cattle your Petitioners lost the benefit of the sale and had at that time to pay £15 for the expenses of advertising and preparing for the sale, that the cows were kept by the Natives from the 14th October, 1861, to the 11th January, 1862, a period of nearly thirteen weeks, during which time the Natives milked them, but so starved and neglected them that they became greatly deteriorated in value and unfit for sale, and though your Petitioners limited their claim to £50 to bring it within the jurisdiction of the Court, in reality the loss they sustained greatly exceeded that amount, as the following statement will show, viz: expenses of sale, £15; loss of milk for thirteen weeks, £4 per week, £52; loss of milk for feeding calves and pigs, thirteen weeks at £1, £13; deterioration of value in the cows the Natives kept; twenty cows at £3 per head £60; value of two heifers in calf not returned £15; making in all the sum of £156. That during the whole of such thirteen weeks, your Petitioners' were compelled to forego their ordinary livelihood for the above cause; that the substantial correctness of your Petitioners' evidence was admitted by the Natives; on their behalf it was contended by their counsel that your Petitioners' losses were sustained by their own misconduct, and therefore the Natives were not answerable, and it was not attempted to answer the charges of trespass, nor was any defence made except as aforesaid for the violent breaking down of your Petitioners' property, driving away and detaining their cattle and assaulting them and their families. That the Court, including the two interested chiefs, after taking time to consider their judgment, awarded to the Maori Paora, the sum of £30 for grass money, and dismissed the summons of your Petitioners, who intended to appeal against such decision and declined to pay the damages so awarded against them; whereupon Mr. Crosbie Ward, who had taken the conduct of the Maories cases throughout, and had instructed the counsel retained on their behalf, but by whom they did not appear, though it must have been at the request of the said Mr. Crosbie Ward, or by the Provincial Government of Hawke's Bay, at his instigation paid into Court at Napier, the sum of £30, to the credit of your Petitioners, which sum they agreed to allow to be paid in discharge of the Natives' claim against them. That your Petitioners conceive the payment so made by Mr. Ward was an admission that the judgment of the said Court could not be supported on appeal, and must have been paid by him on that ground only, but your Petitioners say that a further redress is due to them, and the very serious loss they have sustained should have been taken into consideration by the said Court and made good to them. That your Petitioners are both in indigent circumstances, having great difficulty in earning their daily bread, and having in addition to the injury aforesaid, recently sustained several other losses. That unless your Honorable House is graciously pleased to administer some relief to them they will be ruined, and further, that unless the decision of the said Court is overruled or discountenanced, the Natives will be naturally induced to commit similar outrages under the apparent sanction of the law, and to the serious impediment of those friendly relations which a due administration of the admitted law without fear or favor to either race would unquestionably tend to create, and whereby alone the law will be respected, and the judgments of its Courts obeyed.

And Your Petitioners, as in duty bound will ever pray.

THOMAS SHIRLEY.  
HENRY SHIRLEY.